



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: February 14, 2017
MAHS Docket No.: 16-012880
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16 and 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on January 19, 2017, from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG).

Respondent did not appear at the hearing; and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
3. Should Respondent be disqualified from receiving benefits for FAP?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on June 13, 2016, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of FAP benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in group composition.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is October 1, 2013 to August 31, 2014 (fraud period).
7. During the fraud period, Respondent was issued ██████ in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to ██████ in such benefits during this time period.
8. The Department alleges that Respondent received an OI in FAP benefits in the amount of ██████
9. This was Respondent's first alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

The Food Assistance Program (FAP) [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. The Department (formerly known as the Department of Human Services) administers FAP pursuant to MCL 400.10; the Social Welfare Act, MCL 400.1-.119b; and Mich Admin Code, R 400.3001 to .3015.

Effective January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
 - the total amount is less than \$500, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

BAM 720 (January 2016), pp. 12-13; ASM 165 (May 2013), pp. 1-2.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (January 2016), p. 7; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720, p. 1 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the OIG agent testified that it is requesting a FAP program disqualification and recoupment of benefits due to Respondent's failure to report a change in group composition. It should be noted that the OIG agent did not seek an IPV based on failure to report her father's, [REDACTED] employment income. Exhibit A, p. 3.

Other changes must be reported within 10 days after the client is aware of them. BAM 105 (October 2013), p. 9. These include, but are not limited to, changes in persons in the home. BAM 105, p. 9.

On September 23, 2013, Respondent submitted an online application in which she acknowledged her responsibility to report changes as required. Exhibit A, pp. 11-25. In the application, Respondent reported that her group composition was three, consisting of herself, her daughter, and Respondent's father, [REDACTED] Exhibit A, pp. 15-17.

The Department then had a IG-180 PARIS Interstate Match that indicated [REDACTED] (Respondent's father) listed in subjects household was actively receiving FAP benefits in Michigan and Wisconsin. Exhibit A, pp. 1 and 26. However, the OIG agent testified this allegation was proven false, but the investigation showed that Respondent failed to report her father's, [REDACTED] earned income from employment with [REDACTED]. See Exhibit A, p. 28.

On October 28, 2015, the OIG agent interviewed Respondent by telephone to address the allegations, to which she stated the following: (i) she only meant to list her father in the home and not on her FAP grant; (ii) she failed to take him off her FAP case when she realized the mistake; and (iii) they purchase and prepare food separately. See Exhibit A, pp. 1 and 3 (OIG Investigation Report). As such, the Department argues that that Respondent committed an IPV of her FAP benefits because she failed to report her correct group size, which caused an OI of FAP benefits.

Based on the foregoing information and evidence, the Department has failed to establish by clear and convincing evidence that Respondent committed an IPV of FAP benefits. There was no evidence to show that Respondent, during the alleged fraud period, intentionally withheld or misrepresented her group composition (i.e., father not a member of the group composition) during the fraud period. The Department presented Respondent's application and direct testimony the OIG agent had with Respondent regarding the allegations. However, this evidence/testimony failed to show by clear and convincing evidence that Respondent intentionally withheld or misrepresented her

group composition for the purpose of maintaining Michigan FAP eligibility. Therefore, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented her group composition for the purpose of establishing, maintaining, increasing or preventing reduction of her FAP program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of FAP benefits.

Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720, p. 15; BEM 708 (April 2016), p. 1. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720, p. 16. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708, p. 1. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

In this case, the Department has not satisfied its burden of showing that Respondent committed an IPV concerning FAP benefits. Therefore, Respondent is not subject to a disqualification under the FAP program. BAM 720, p. 16.

Overissuance

As stated previously, the Department failed to show that Respondent purposely failed to report her group composition information. Thus, no IPV was committed. However, the Department can still proceed with recoupment of the OI when there is client error.

A client/provider error overissuance is when the client received more benefits than he/she was entitled to because the client/CDC provider gave incorrect or incomplete information to the department. BAM 715 (January 2016), p. 1.

A client error is present in this situation because Respondent admitted to the OIG agent that she only meant to list her father, [REDACTED], in the home and not on her FAP grant and that she failed to take him off her FAP case when she realized the mistake. See Exhibit A, p. 3. Respondent's admission is an appropriate consideration in determining whether client error occurred. Respondent's statement was given directly to the testifying agent who credibly testified concerning the statement. Respondent's statement is not hearsay because it was an admission by party opponent (Michigan Rules of Evidence 801(d)(2)); for good measure, the statement also meets a hearsay exception a statement against interest by an unavailable declarant (Michigan Rules of Evidence 804 (b)(3)).

In summary, the undersigned Administrative Law Judge (ALJ) finds that Respondent's actions were not intentional to warrant an IPV. Instead, the undersigned ALJ finds that Respondent's actions fall under the case disposition of client error because she admitted to the OIG agent that she failed to remove her father, [REDACTED], from her FAP case when she realized the mistake. See BAM 105, p. 9.

Applying the OI begin date policy, it is found that the Department improperly applied the OI begin date of October 1, 2013. Exhibit A, pp. 3 and BAM 715, pp. 4-5. The appropriate OI begin date is January 1, 2014. During the period of October 2013 to December 2013, even though Respondent claimed that her father should not have been on her FAP case, he was required to be a mandatory group member because Respondent was under the age of 22. Policy states that parents and their children under 22 years of age who live together must be in the same group regardless of whether the child(ren) have their own spouse or child who lives with the group. BEM 212 (October 2013), p. 1. Respondent's date of birth is [REDACTED]. See Exhibit A, p. 13. Respondent turned 22 years of age on [REDACTED]. This meant that she was under the age of 22 years during the period of October 2013 to December 2013. It does not matter if Respondent did not want her father, [REDACTED] to be on her case because [REDACTED] was a mandatory group member during the period of October 2013 to December 2013. As such, the proper group size was three for the period of October 2013 to December 2013 and these benefit periods will be excluded from the OI period sought. See BEM 212, p. 1.

Nevertheless, Respondent was 22 years of age or older during the remaining OI period of January 2014 to August 2014. As such, the undersigned ALJ finds that the evidence and testimony established that Respondent's father should have been excluded from the FAP group composition during the period of January 2014 to August 2014. See Exhibit A, p. 3 and see BEM 212, pp. 1-13 (FAP composition is established by determining all of the following: (i) who lives together; (ii) the relationship(s) of the people who live together; (iii) whether the people living together purchase and prepare food together or separately; and (iv) whether the person(s) resides in an eligible living situation).

Additionally, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The amount of the OI is the benefit amount the group or provider actually received minus the amount the group was eligible to receive. BAM 715, p. 6.

In establishing the OI, the Department presented evidence showing that Respondent should have received benefits based on excluding the father from the group size during the OI period of January 2014 to August 2014. Exhibit A, pp. 29-32. As such, the Department is entitled to recoup [REDACTED] the period of January 1, 2014 to August 31, 2014. See RFT 260 (December 2013), p. 1 and Exhibit A, pp. 29-32.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, concludes that:

1. The Department **has not** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of FAP program benefits in the amount of [REDACTED].

The Department is **ORDERED** to reduce the OI to [REDACTED] for the period January 1, 2014 to August 31, 2014, and initiate recoupment/collection procedures in accordance with Department policy, less any amount already recouped and/or collected.

EF/tm

Eric J. Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

[REDACTED]
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CC: [REDACTED]